IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.673 of 2006

S.Valli ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Magistrate and
District Collector,
Tiruchirappalli District. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to produce the body of the petitioner's husband namely Shanmugham, who is detained in Central Prison, Trichy District before this Court and set him at liberty forthwith and call for the records pursuant to the detention order dated 03.02.2006 made in Crl.M.P.No.1 of 2006 on the file of the second respondent and quash the same.

For Petitioner : Mr.B.Kumarasamy
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Shanmugham, who is detained as a ''Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 03.02.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to eight adverse cases out of which one is under Section 302 and 380 IPC, has contended that inasmuch as the detaining authority has not adverted to those adverse cases and by merely referring the ground case, which is a lesser offence i.e. under Section 392 IPC, arrived at a conclusion that there is a real possibility of his coming out on bail by filing a bail application and according to the learned counsel, the detaining authority has not applied his mind on all the relevant materials, particularly with reference to the first adverse case, which is grave in nature (302 IPC).

4. In the light of the above contention, we have verified the necessary averments in para 5 of the grounds of detention. It is not in dispute that the detenu had involved in eight adverse cases and the first adverse case said to have taken place on 16.05.2003, relates to offence under Sections 302 and 380 IPC on the file of Mannachanallur Police Station, Tiruchirapalli. It is also not in dispute that though the said occurrence had taken place on 16.05.2003, the accused therein (detenu) was arrested only on 14.12.2005 i.e. after the ground occurrence. In such circumstances, as rightly pointed out by the learned counsel for the petitioner, there must be awareness as to the adverse cases particularly, the first adverse case, which is for an offence under Section 302 IPC and as to whether there is any possibility of the detenu coming out on bail by filing bail application. As rightly pointed out, except reference to Crime No.408 of 2004 on the file of Mannachanallur Police Station, Trichirapally, which relates to the ground occurrence, the detaining authority has not adverted to other adverse cases, particularly, first adverse case, while mentioning possibility of coming out on bail.

5. In this regard, learned counsel for the petitioner relied on a Division Bench decision of this Court reported in 2001-1 Law Weekly (Criminal) 196 (KANNIAPPAN VS. THE DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, KARUR DISTRICT AND ANOTHER). Almost in similar circumstances and among several adverse cases, one relates to offence under Section 302 IPC and after finding that when comparing the offences listed in the ground case, they are minor in nature and after finding that the detaining authority had not at all adverted to the serious offences of murder covered by other adverse cases, which amply show the non application of mind on the part of the detaining authority, quashed the detention order.

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6. In (2004) 2 Law Weekly Criminal 681 (AMEER VS. THE STATE OF TAMIL NADU AND ANOTHER), in similar circumstances, following the earlier orders of this Court, quashed the order of detention therein. The following conclusion in para 5 is relevant, which reads as under.

> "5.The learned counsel for the petitioner, of course, placing reliance on the decision in Dharmar Vs. State of Tamil Nadu & another reported in 1995 (1) law Weekly (Crl.) 333, which was followed in Kanniappan Vs. The District Magistrate Etc., & another reported in 2000(1) L.W.(Crl.) 196 contends that when the crime referred to in the adverse cases is more grave in nature, there is no imminent possibility of the accused being released on bail, as opined by the detaining authority and therefore, the order of detention, based on such opinion, is vitiated for non application of mind."

7. As observed earlier, in our case, the first adverse case relates to an offence under Section 302 IPC. Though the said occurrence is said to have taken place in the year 2003, admittedly, the accused-detenu was arrested only on 14.12.2005. While considering the imminent possibility, admittedly the detaining authority has relied on the ground case in Crime No.408/2005 and there is no reference to the other adverse cases, particularly, the first adverse case, which relates to under Section 302 IPC. In such circumstances, we are of the view that the above two decisions relied on by the learned counsel for the petitioners are applicable to the case on hand and we hold that the order of detention passed only with reference to the ground case is vitiated for non application of mind.

8. The learned Additional Public Prosecutor has submitted that though the adverse cases show that the detenu had involved in several cases of theft and chain snatching, in all those cases, the properties were recovered. It is made clear, we are not underestimating the involvement of the detenu nor the other offences referred to in the earlier part of the grounds of detention. The respondents are free to proceed in accordance with law. As rightly pointed out by the learned counsel for the petitioner while considering the imminent possibility of the detenu being coming out on bail, we are satisfied that the detaining authority has not adverted to the grave offence under Section 302 and 380 IPC, which relates to first adverse case, shows non application of mind on his part. In view of the same, by applying the principles laid down in the above referred decisions, we have no other option except to accept the argument of the learned counsel appearing for the petitioner. On this ground, we quash the impugned order of detention.

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9. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The District Magistrate and District Collector, Tiruchirapalli District.

3. The Superintendent, Central Prison, Tiruchirapalli.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

TJL(CO)
SR/27.9.2006 HCP. No.673 of 2006

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